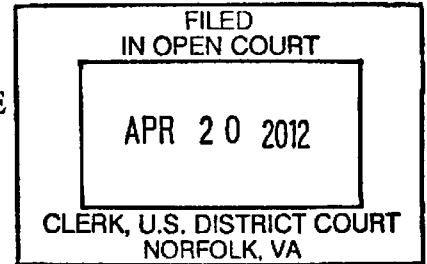


IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Norfolk Division



UNITED STATES OF AMERICA

v.

ERIC H. MENDEN,

Defendant.

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) CRIMINAL NO. 2:12CR55  
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STATEMENT OF FACTS

The parties stipulate that the allegations in the information and the following facts are true and correct, and that had the matter gone to trial, the United States would have proven them beyond a reasonable doubt.

I. FACTS RELATED TO THE CONSPIRACY TO COMMIT WIRE FRAUD AND FALSE STATEMENTS (COUNTS ONE AND TWO)

A. INTRODUCTION

1. ERIC H. MENDEN, the defendant, and Conspirator A purchased buildings in historic neighborhoods in Virginia with the purpose of rehabilitating such properties to obtain federal and state historic rehabilitation tax credits.

2. The United States Department of the Interior, National Park Service ("National Park Service") administers the Federal Historic Preservation Tax Incentives program. This program allows property owners to obtain a tax credit equal to 20 percent of certified rehabilitation expenses. The National Park Service administers this program in partnership with the Internal Revenue Service ("IRS") and the Virginia Department of Historic Resources ("VDHR").

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3. The VDHR administers the Virginia Historic Rehabilitation Tax Credit program.

This program allows property owners to receive a state tax credit equal to 25 percent of certified rehabilitation expenses.

4. In Virginia, the National Park Service administers its historic rehabilitation tax credit program in conjunction with the VDHR. The National Park Service and the VDHR both use the following three-step application process to administer their programs:

- (a) Historic Preservation Certification Application – Part 1: To begin the application process, the property owner must complete and file the National Park Service's Historic Preservation Certification Application, Part 1. Part 1 determines whether the property satisfies the legal definition of "certified historic structure" and thereby qualifies for historic rehabilitation tax credits. After receiving Part 1 approval, the property owner is eligible to move forward in the application process. It is not unusual for a property owner to file Part 1 and Part 2 of the application process at the same time.
- (b) Historic Preservation Certification Application – Part 2: To satisfy the second step in the application process, the property owner must complete and file the Historic Preservation Certification Application, Part 2. Part 2 determines whether the proposed plan for rehabilitation of the certified historic structure is consistent with the Secretary of the Interior's Standards for Rehabilitation. The National Park Service delegates to VDHR the analysis of whether the proposed plan satisfies these standards and qualifies as a "certified rehabilitation."
- (c) Historic Preservation Certification Application – Part 3: After receiving approval for Part 1 and Part 2, the property owner must complete and file the Historic Preservation Certification Application, Part 3. The National Park Service typically submits its Part 3 forms to VDHR for review and processing. Part 3 requires the applicant to provide the date when work was completed, and to estimate the costs attributed solely to the rehabilitation of the historic structure. When costs exceed \$100,000, the property owner must provide a report prepared by a certified public accountant certifying the costs attributed to the rehabilitation of the historic structure. If the National Park Service and VDHR are satisfied that the completed rehabilitation is consistent with the Secretary of the Interior's Standards for Rehabilitation, then the project is designated a "certified rehabilitation." After obtaining this designation, the National Park Service and VDHR notify the property owner of the amount of federal and/or state historic rehabilitation tax credits awarded to the project.

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5. From on or about January 20, 2006 through in or about August 2011, ERIC H. MENDEN knowingly and intentionally conspired with others to commit wire fraud. Specifically, ERIC H. MENDEN and his conspirators engaged in a scheme and artifice to defraud the United States of America, the Commonwealth of Virginia, and corporate investors with respect to historic rehabilitation tax credits, and he and his conspirators executed that scheme by interstate wire transfers.

6. ERIC H. MENDEN and Conspirator A obtained state and federal historic rehabilitation tax credits through false and fraudulent pretenses. ERIC H. MENDEN and Conspirator A then transferred these fraudulent tax credits to unsuspecting corporate investors in exchange for millions of dollars.

7. ERIC H. MENDEN and Conspirator A successfully defrauded the United States of America, the Commonwealth of Virginia, and corporate investors by obtaining and/or selling tax credits for two rehabilitation projects located at 345 Granby Street and 742 West Princess Anne Road in Norfolk, Virginia.

B. 345 GRANBY STREET

(1) FACTS RELATED TO FEDERAL AND STATE TAX CREDIT APPLICATIONS

8. On or about January 20, 2006, ERIC H. MENDEN and Conspirator A obtained a loan from the Bank of the Commonwealth to purchase and renovate the old James Madison Hotel located at 345 Granby Street in Norfolk, Virginia. ERIC H. MENDEN and Conspirator A formed 345 Granby, LLC to hold the property and to serve as the business entity controlling the rehabilitation project.

9. On or about April 14, 2006, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 1 with VDHR to determine whether

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this project could qualify for state historic rehabilitation tax credits. On or about May 15, 2006, VDHR concluded that the property located at 345 Granby Street was a "certified historic structure" and could qualify for state historic rehabilitation tax credits.

10. On or about June 5, 2006, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 2 with VDHR. The application described the proposed renovations and estimated the renovations would cost \$11,000,000. On or about September 28, 2007, VDHR approved Part 2 of the application concluding that the proposed renovations to 345 Granby Street were acceptable and met the Secretary of the Interior's Standards for Historic Preservation.

11. On or about January 8, 2008, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed Historic Preservation Certification Applications, Part 1 and Part 2 with the National Park Service to determine whether this project could qualify for federal historic rehabilitation tax credits, and to describe the proposed renovations. Again, ERIC H. MENDEN estimated that the renovations would cost \$11,000,000. On or about January 15, 2008, the National Park Service concluded that 345 Granby Street was a "certified historic structure" and could qualify for federal historic rehabilitation tax credits.

12. Between in or about December 2009 and on or about February 12, 2010, ERIC H. MENDEN, Conspirator A and other known and unknown conspirators created spreadsheets purporting to outline rehabilitation costs for 345 Granby Street. In fact, these spreadsheets had little to no correlation to the actual costs of the renovations. ERIC H. MENDEN and Conspirator A then provided these falsified spreadsheets to accountants located in Cleveland, Ohio who were to prepare a Historic Rehabilitation Tax Credit Cost Certification Report. The conspirators

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determined that it was easier to completely fabricate costs related to the project rather than inflate actual invoices.

13. When the accountants requested documents to support the costs set forth in the spreadsheets, ERIC H. MENDEN, Conspirator A, and other known and unknown conspirators created false invoices, bank documents, certificates of occupancy, and other documents. For example, ERIC H. MENDEN and his conspirators submitted the following false documents to the accountants:

- An altered Change in Terms Agreement dated September 10, 2009 from the Bank of the Commonwealth purporting to increase the amount of the 345 Granby Street loan from \$16,000,000 to \$21,000,000;
- Fabricated loan statements from the Bank of the Commonwealth dated November 30, 2009 and December 30, 2009;
- Fabricated and altered invoices from EHM Construction, RL Midgett, Inc., F&C Fireproofing, Inc., FCM Company, Inc., and ProSource; and
- A forged Certificate of Occupancy from the City of Norfolk.

ERIC H. MENDEN and other known and unknown conspirators also created checks – which they never negotiated – to substantiate the expenditures set forth in the fabricated and altered invoices. The accountants, without knowledge of this wrongdoing, prepared the Historic Rehabilitation Tax Credit Cost Certification Report dated February 12, 2010 based wholly on these false submissions.

14. On or about February 12, 2010, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 3 with VDHR. In this application, ERIC H. MENDEN falsely stated that the renovation of 345 Granby Street actually cost \$22,558,518. To support this claim, ERIC H. MENDEN submitted the accountants' Historic Cost Certification Report which certified that the total qualified rehabilitation

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expenditures were \$22,558,518. At the time of its submission, ERIC H. MENDEN and Conspirator A were well aware that the accountants' report was entirely false and that the amount they actually spent to renovate 345 Granby Street was far less than \$22,000,000. For example, the accountants' report represented that ERIC H. MENDEN and Conspirator A incurred the following costs in rehabilitating 345 Granby Street:

- Brick repairs - \$80,000
- Plumbing - \$950,000
- HVAC - \$1,298,800
- Electrical - \$1,052,000
- Drywall and Framing - \$1,674,910
- Terracotta Repairs - \$538,300
- Sprinkler System - \$690,650
- Carpet - \$460,000

All of these numbers were based on the false submissions. For example, the invoices submitted to support the costs for the sprinkler system were inflated by almost \$450,000, the invoices submitted on behalf of R.L. Midgett to support plumbing, electrical, and HVAC costs were inflated by over \$2,000,000 and the invoices submitted to support the \$460,000 in carpet costs were completely fabricated.

15. In the Part 3 Application, ERIC H. MENDEN also falsely represented that the construction of 345 Granby Street was completed on December 24, 2009. This also was not true. The conspirators had not completed the rehabilitation. Instead, they created a forged Certificate of Occupancy purportedly issued by the City of Norfolk.

16. On or about February 24, 2010, based on the fraudulent materials submitted to support the application, VDHR concluded that the 345 Granby Street project was a "certified rehabilitation" and awarded \$5,639,629.50 in state historic rehabilitation tax credits to 345 Granby, LLC.

17. On or about March 3, 2010, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 3 with the National Park Service. In this application, ERIC H. MENDEN falsely stated that the cost of rehabilitation was \$22,558,518. Again, ERIC H. MENDEN submitted the accountants' Historic Cost Certification Report to support the application. He also falsely represented that the rehabilitation of 345 Granby Street was completed on December 24, 2009.

18. On or about May 11, 2010, the National Park Service informed ERIC H. MENDEN and Conspirator A that the 345 Granby Street project did not meet the Secretary of Interior's Standard for Rehabilitation. Therefore, the project did not qualify as a "certified rehabilitation" and was not eligible for the 20 percent investment tax credit for historic properties. The National Park Service has not awarded federal historic tax credits for the 345 Granby Street project.

## (2) FACTS RELATED TO THE FRAUD ON INVESTORS

19. Between in or about August 2006 and on or about November 5, 2010, ERIC H. MENDEN and Conspirator A negotiated with a tax credit broker in San Francisco, California to finalize the terms of an agreement whereby ERIC H. MENDEN and Conspirator A would transfer the federal and state historic rehabilitation tax credits they expected to receive for 345 Granby Street to investors in exchange for substantial cash payments. During these negotiations, ERIC H. MENDEN and Conspirator A represented to the tax credit broker that these federal and state tax credits would be legitimate, and not wholly based on fraud.

20. On or about May 9, 2008, ERIC H. MENDEN and Conspirator A executed several agreements related to the transfer of the tax credits in exchange for cash payments. Many of these agreements contained promises that ERIC H. MENDEN and Conspirator A were

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abiding by all laws and regulations relating to the rehabilitation of 345 Granby Street. ERIC H. MENDEN and Conspirator A signed these documents all the while knowing that they were pursuing federal and state tax credits through fraudulent means.

21. On or about November 19, 2008, the tax credit broker caused an investment fund to send three wires totaling \$1,968,010 from an account in California to bank accounts in Norfolk, Virginia controlled by ERIC H. MENDEN and Conspirator A. ERIC H. MENDEN and Conspirator A used a portion of these funds for their own personal purposes.

22. Between in or about May 2008 and in or about November 2010, ERIC H. MENDEN and Conspirator A sent false invoices, altered bank statements, and other false documents to the tax credit broker to mask their personal financial problems and to create the appearance that they would obtain a substantial amount of legitimate federal and state rehabilitation tax credits for the 345 Granby Street project.

23. On or about February 24, 2010, ERIC H. MENDEN transferred \$5,639,629.50 in fraudulently obtained Virginia historic rehabilitation tax credits to various investment funds. That same day, the tax credit broker transferred these credits from the investment funds to three specific corporate investors. The three corporate investors subsequently used the fraudulently obtained \$5,639,629.50 in state historic rehabilitation tax credits to decrease their tax obligations to the Commonwealth of Virginia.

24. On or about March 11, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$1,079,786.78 from an account in California to a bank account in Norfolk, Virginia controlled by ERIC H. MENDEN and Conspirator A. ERIC H. MENDEN and Conspirator A used a portion of these funds for their own personal purposes.



25. On or about March 19, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$2,339,946.81 from an account in California to a bank account in Norfolk, Virginia controlled by ERIC H. MENDEN and Conspirator A. ERIC H. MENDEN and Conspirator A used a portion of these funds for their own personal purposes.

26. On or about April 16, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$1,177,769.98 from an account in California to a bank account in Norfolk, Virginia controlled by ERIC H. MENDEN and Conspirator A. ERIC H. MENDEN and Conspirator A used a portion of these funds for their own personal purposes.

27. On or about April 16, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$439,455.19 from an account in California to an escrow account at the Branch Banking & Trust Company for Pioneer Title, LLC. ERIC H. MENDEN and Conspirator A used these fraudulently obtained monies to pay mechanics liens, judgments and past due taxes related to 345 Granby Street.

28. On or about November 5, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$979,100 from an account in California to a bank account in Chesapeake, Virginia controlled by ERIC H. MENDEN and Conspirator A. That same day, ERIC H. MENDEN and Conspirator A each withdrew \$200,000 from this account and used the money for their own personal purposes.

29. A corporate investor claimed \$4,506,741 in federal historic rehabilitation tax credits to decrease its 2010 federal tax liability even though the National Park Service has never awarded federal historic rehabilitation tax credits for the 345 Granby Street project.

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C. MERCER APARTMENTS

(1) FACTS RELATED TO FEDERAL AND STATE HISTORIC TAX CREDIT APPLICATIONS

30. In or about 2006, ERIC H. MENDEN and Conspirator A purchased the Mercer Apartments located at 742 West Princess Anne Road in Norfolk, Virginia. ERIC H. MENDEN and Conspirator A formed Mercer Building, LLC to hold the property and to serve as the business entity controlling the rehabilitation project.

31. On or about March 19, 2008, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed Historic Preservation Certification Application, Part 1 with the National Park Service and VDHR to determine whether this project could qualify for federal and state historic rehabilitation tax credits. On or about May 14, 2008, the National Park Service approved Part 1 of this application.

32. On or about March 2, 2009, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed Historic Preservation Certification Application, Part 2 with the National Park Service and VDHR. The application described the proposed renovations and estimated that the renovations would cost \$3,400,000. On or about March 26, 2009, the National Park Service conditionally approved the proposed plans for rehabilitation.

33. From in or about December 2010 through on or about January 21, 2011, ERIC H. MENDEN, Conspirator A and other known and unknown conspirators created spreadsheets purporting to outline construction costs for the Mercer Apartments. In fact, these spreadsheets had little to no correlation to the actual costs of the renovation. ERIC H. MENDEN and Conspirator A then provided these falsified spreadsheets to accountants located in Cleveland, Ohio who were to prepare a Historic Rehabilitation Tax Credit Cost Certification Report. When the accountants requested documents to support the costs set forth in the spreadsheets, ERIC H.

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MENDEN, Conspirator A and other known and unknown conspirators again created false invoices, false bank documents, false checks and forged certificates of occupancy.

34. On or about February 10, 2011, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 3 with VDHR. In this application, ERIC H. MENDEN falsely stated that the renovation of the Mercer Apartments actually cost \$4,570,955. To support this claim, ERIC H. MENDEN submitted the accountants' Historic Cost Certification Report which certified that the total qualified rehabilitation expenditures for the project were \$4,570,955. At the time of its submission, ERIC H. MENDEN and Conspirator A were well aware that the accountants' report was entirely false and that the amount they actually spent to renovate the Mercer Apartments was far less than \$4,500,000. For example, the accountants' report represented that ERIC H. MENDEN and Conspirator A incurred the following costs in rehabilitating the Mercer Apartments:

- Interior Demolition - \$220,000
- Framing - \$340,000
- Environmental - \$87,620
- Electrical - \$143,900
- Drywall - \$365,000
- Ceramic Tile - \$135,000

Like the numbers for the 345 Granby Street project, all of the numbers for the Mercer Apartment renovations were based on the false submissions.

35. On or about February 23, 2011, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 3 with the National Park Service. In this application, ERIC H. MENDEN falsely stated that the renovation of the Mercer Apartments actually cost \$4,570,955.

36. On or about March 14, 2011, VDHR sent a letter to ERIC H. MENDEN requesting additional support for various project expenditures.

37. On or about April 11, 2011, ERIC H. MENDEN sent a response to VDHR explaining the expenditures. As support, ERIC H. MENDEN attached false invoices and other altered documents including, but not limited to:

- An altered asbestos certification
- Fabricated invoices for EHM Construction
- An altered invoice from Roof Tech, Inc.

38. To date, neither the National Park Service nor VDHR has approved federal or state historic rehabilitation tax credits for the Mercer Apartments.

(2) FACTS RELATED TO INVESTORS

39. Between in or about November 2008 and on or about May 21, 2010, ERIC H. MENDEN and Conspirator A negotiated with a tax credit broker in San Francisco, California to finalize the terms of an agreement whereby ERIC H. MENDEN and Conspirator A would transfer the federal and state historic rehabilitation tax credits they expected to receive for the Mercer Apartments to investors in exchange for substantial cash payments. During these negotiations, ERIC H. MENDEN and Conspirator A represented that these federal and state tax credits would be legitimate.

40. On or about December 23, 2009, ERIC H. MENDEN and Conspirator A executed several agreements related to the transfer of the tax credits in exchange for cash payments. Many of these agreements contain promises that ERIC H. MENDEN and Conspirator A were abiding by all laws and regulations relating to the rehabilitation of the Mercer Apartments. ERIC H. MENDEN and Conspirator A signed these documents all the while knowing that they were pursuing federal and state tax credits through fraudulent means.

41. ERIC H. MENDEN and Conspirator A sent false documents via e-mail and facsimile to the tax credit broker to create the appearance that they would obtain a substantial amount of legitimate federal and state rehabilitation credits for the Mercer Apartments project

42. On or about May 21, 2010, the tax credit broker caused an investment fund to send one wire for \$248,689.82 from an account in California to a bank account in Chesapeake, Virginia controlled by ERIC H. MENDEN and Conspirator A. ERIC H. MENDEN and Conspirator A used these funds for their own personal purposes.

43. A corporate investor claimed \$928,007 in federal historic rehabilitation tax credits to decrease its federal tax liability even though the National Park Service has not awarded federal historic rehabilitation tax credits for the Mercer Apartments project.

D. CONCLUSION

44. ERIC H. MENDEN also submitted fraudulent federal and state historic rehabilitation tax credit applications for two additional properties located at 430 Boush Street and 3700 Hampton Boulevard in Norfolk, Virginia. ERIC H. MENDEN again utilized the tax credit broker to fraudulently obtain money from corporate investors who invested in and claimed fraudulently obtained historic tax credits related to 3700 Hampton Boulevard.

45. In total, corporate investors paid to ERIC H. MENDEN and Conspirator A approximately \$8,724,762.84 for illegitimate tax credits.

46. As a result of these activities, the United States of America suffered a loss of approximately \$6,222,097.

47. As a result of these activities, the Commonwealth of Virginia suffered a loss of approximately \$6,287,004.

II. FACTS RELATED TO THE CONSPIRACY TO COMMIT BANK FRAUD (COUNT THREE)

A. INTRODUCTION

48. The Bank of the Commonwealth (the "Bank"), headquartered in Norfolk, Virginia, was the sole business of Commonwealth Bankshares, Inc., whose securities were traded on the Nasdaq Stock Exchange under trading symbol "CWBS." The Bank was a financial institution with deposits insured by the Federal Deposit Insurance Corporation.

49. From in or about January 2008 through in or about August, 2011, ERIC H. MENDEN knowingly and intentionally conspired with other known and unknown conspirators to commit bank fraud. Specifically, ERIC H. MENDEN and his conspirators engaged in a scheme and artifice to defraud the Bank of moneys, funds, credits, assets and securities by means of materially false and fraudulent pretenses, representations and promises.

50. ERIC H. MENDEN and Conspirator A performed favors for Bank insiders in exchange for preferential treatment to the detriment of the Bank. ERIC H. MENDEN and Conspirator A also helped Bank insiders fraudulently conceal the extent of the Bank's non-performing assets by purchasing Bank-owned property again to the detriment of the Bank.

B. BANK FRAUD INVOLVING 345 GRANBY STREET

51. In or about January 2006, ERIC H. MENDEN and Conspirator A obtained a \$16,000,000 loan from the Bank for the purchase and renovation of property located at 345 Granby Street in Norfolk, Virginia. The conspirators knew that the proceeds of this loan were required to use the funds solely for the purpose of the construction of 345 Granby Street. On or about January 3, 2008, the Bank already had advanced \$9,247,477.44 on the loan for construction.

52. From in or about January 2006 through in or about December 2009, ERIC H. MENDEN and Conspirator A submitted construction draw requests to the Bank to obtain loan proceeds for costs purportedly incurred renovating 345 Granby Street. These draw requests inflated the amounts owed subcontractors and included work that was not completed. Conspirator C, a Bank insider, caused the Bank to fund these construction draws without verifying that the work was actually completed or that the costs itemized in the draw requests were accurate. For example, on or about February 19, 2009, ERIC H. MENDEN and Conspirator A submitted a draw request for \$410,000. As support for this request, ERIC H. MENDEN and Conspirator A prepared a single sheet of paper listing the following expenses:

Plumbing	\$60,000
Electrical	\$80,000
Sprinkler	\$60,000
Paint	\$40,000
Drywall	\$50,000
Steel	\$50,000
Elevator	\$70,000
Total	\$410,000

On or about February 20, 2009, Conspirator C, without inspecting the building or requiring any support for these expenditures, approved and funded the draw request. ERIC H. MENDEN and Conspirator A then deposited these loan proceeds in the 345 Granby LLC demand deposit account.

53. On or about May 12, 2009, ERIC H. MENDEN and Conspirator A submitted another draw request for \$420,000. As support for this request, ERIC H. MENDEN and Conspirator A prepared a single sheet of paper listing the following expenses:

Steel	\$50,000
HVAC	\$200,000
Electrical	\$60,000
Drywall	\$30,000
Ceramic Tile	\$35,000

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Plumbing Fixtures	\$20,000
Paint	\$25,000
Total	\$420,000

On or about May 14, 2009, Conspirator C again approved and funded this draw request without inspecting the building or requiring any support for these expenditures. ERIC H. MENDEN and Conspirator A then deposited these loan proceeds in the 345 Granby LLC demand deposit account.

54. In or about May 2008, Conspirator C obtained an inflated appraisal for 345 Granby Street that valued the property at approximately \$20,000,000.

55. On or about May 22, 2008, Conspirator C caused the Bank to cash a \$250,000 check written to ERIC H. MENDEN from the 345 Granby LLC demand deposit account. That same day, Conspirator B caused the Bank to cash a \$250,000 check written to Conspirator A from 345 Granby LLC demand deposit account. The conspirators all knew that such funds were to be used solely for the renovation of 345 Granby Street. Instead, ERIC H. MENDEN and Conspirator A used these loan proceeds for their own personal purposes.

56. On or about November 21, 2008, Conspirator C caused the Bank to cash a \$100,000 check written to ERIC H. MENDEN from the 345 Granby LLC demand deposit account. That same day, Conspirator C caused the Bank to cash a \$100,000 check written to Conspirator A from the 345 Granby LLC demand deposit account. The conspirators all knew that such funds were to be used solely for the renovation of 345 Granby Street.

57. On or about January 15, 2009, Conspirator C caused the Bank to cash a \$150,000 check written to ERIC H. MENDEN from the 345 Granby LLC demand deposit account. That same day, Conspirator C caused the Bank to cash a \$150,000 check written to Conspirator A from the 345 Granby LLC demand deposit account. The conspirators all knew that such funds

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were to be used solely for the construction of 345 Granby Street. Instead, ERIC H. MENDEN and Conspirator A used these loan proceeds for their own personal purposes.

58. On or about June 11, 2009, Conspirator C caused the Bank to fund a \$339,342.12 construction draw on the 345 Granby Street loan. This brought the outstanding principal balance on the 345 Granby Street loan to \$15,940,984.88.

59. With the loan fully funded, but renovations far from complete, on or about July 8, 2009, Conspirator B and Conspirator C caused the Bank to approve an additional \$1,900,000 loan to ERIC H. MENDEN and Conspirator A. Conspirator B and Conspirator C caused the Bank to fund this second loan and the full amount was disbursed by September 15, 2009.

60. The approval of this second loan brought the Bank's total debt relationship with ERIC H. MENDEN and Conspirator A to approximately \$41,000,000.

61. In or about October 2009, Conspirator B and Conspirator C authorized ERIC H. MENDEN and Conspirator A to overdraw their demand deposit accounts by approximately \$620,000 purportedly to pay for the renovation of 345 Granby Street.

62. On or about October 21, 2009, Conspirator B and Conspirator C caused the Bank to increase the second loan to ERIC H. MENDEN and Conspirator A by \$550,000 to \$2,450,000. On or about November 21, 2009, Conspirator B and Conspirator C caused the Bank to fully fund the additional \$550,000 and used the loan proceeds to pay down the negative balances in ERIC H. MENDEN and Conspirator A's demand deposit accounts.

63. In or about September 2010, the Bank charged off approximately \$4,000,000 of this loan relationship as a loss.

64. On or about February 16, 2011, the Bank obtained a new appraisal from a different appraiser of 345 Granby Street which listed the property's "as is" fair market value as

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\$2,000,000. On or about March 14, 2011, the Bank obtained a second appraisal of 345 Granby Street, by a third appraiser, that listed its "as is" fair market value as being \$2,850,000.

65. In or about April 2011, the Bank charged off an additional \$8,500,000 of this loan relationship as a loss, for a total loss at that time of \$12,500,000.

C. BANK FRAUD INVOLVING BANK-OWNED PROPERTY AND OTHER FAVORS

66. In or about January 2008, ERIC H. MENDEN and Conspirator A had approximately \$23,000,000 in outstanding principal balances on loans at the Bank.

67. On or about January 17, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A, through their entity Norfolk Property Development, LLC, purchased Bank-owned property located at 5573 Princess Anne Road in Virginia Beach, Virginia. Conspirator B and Conspirator C caused the Bank to advance \$201,500 in loan proceeds to ERIC H. MENDEN and Conspirator A to purchase the property before the loan was actually approved by the Executive Loan Committee of the Bank's Board of Directors.

68. On or about February 11, 2008, Conspirator A sent an e-mail to Conspirator C requesting "25,000 to complete repairs to the foreclosure we picked up from your bank." On or about February 29, 2008 and on or about March 4, 2008, Conspirator C caused the Bank to fund two principal advances totaling \$25,000. On or about June 27, 2011, the Bank charged off approximately \$8,497 of this loan as a loss.

69. On or about June 13, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased property located at Carolyn Way in Lexington, Virginia owned by Conspirator D, another Bank insider. From on or about May 28, 2008 through on or about June 13, 2008, Conspirator B and Conspirator C caused the Bank to fund a \$399,000 loan to facilitate this fraudulent transaction. As a result of this transaction, Conspirator D was no longer

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personally liable for a \$397,627 loan at the Bank. On or about March 31, 2011, the Bank obtained a new appraisal that estimated the value of this property as \$277,000. On or about June 28, 2011, the Bank charged off approximately \$141,392 of this loan as a loss.

70. On or about June 13, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased property located at Crawford Avenue in Portsmouth, Virginia owned by Conspirator D, another Bank insider. Conspirator B and Conspirator C caused the Bank to fund a \$199,000 loan to facilitate this fraudulent transaction. As a result of this transaction, Conspirator D was no longer personally liable for a \$193,602 loan at the Bank. On or about April 25, 2011, the Bank obtained a new appraisal that estimated the value of this property as \$161,000. On or about June 27, 2011, the Bank charged off approximately \$51,355 of this loan as a loss.

71. On or about June 27, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased at a foreclosure auction Bank-owned property located at 1001 Monticello Avenue in Norfolk, Virginia. The original owner of the property was in bankruptcy. Conspirator B instructed ERIC H. MENDEN and Conspirator A to bid up to a specific price for the property so that the Bank could pay off the underlying loan in full. Conspirator B and Conspirator C caused the Bank to fund an \$899,000 loan to facilitate this fraudulent transaction. Conspirator B and Conspirator C caused the Bank to advance an additional \$85,000 to ERIC H. MENDEN and Conspirator A at closing. On or about April 20, 2011, the Bank obtained a new appraisal that indicated that the building has no useful life and assigned a value of \$425,000 which is net of demolition cost. On or about June 28, 2011, the Bank charged off approximately \$516,717 of this loan as a loss.

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72. On or about July 25, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased at a foreclosure auction Bank-owned property located at 107 E. 39th Street in Norfolk, Virginia. Again, Conspirator B instructed ERIC H. MENDEN and Conspirator A to bid up to a specific price so that the Bank could pay off the underlying loan for the property. Conspirator B and Conspirator C caused the Bank to fund a \$231,500 loan to facilitate this fraudulent transaction. On or about June 27, 2011, the Bank charged off approximately \$45,482 of this loan as a loss.

73. On or about February 21, 2008, Conspirator A sent Conspirator C an e-mail stating "Please lower all my rates ASAP. If you are unable to get this done by Friday, please forward this e-mail to [Conspirator B] along with my willingness to purchase [Conspirator D's] condo. However, my willingness to purchase the condo will go away by tomorrow unless my rates drop significantly!"

74. On or about November 3, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased Conspirator D's condominium located at York Street in Norfolk, Virginia. Conspirator B and Conspirator C caused the Bank to fund a \$274,000 principal advance on a separate loan to give ERIC H. MENDEN and Conspirator A the money to purchase the property. Conspirator D made a \$69,484.28 profit from the sale of his condominium.

75. On or about January 7, 2009, Conspirator B and Conspirator C caused the Bank to fund a \$250,000 loan to ERIC H. MENDEN and Conspirator A using as collateral the condominium located on York Street.

76. On or about November 10, 2008, ERIC H. MENDEN paid for a \$6,413.90 upgrade to Conspirator C's kitchen.

77. Starting in September 2008, the Bank's regulators, the Federal Reserve Bank of Richmond ("Federal Reserve") and the Virginia State Corporation Commission ("VSCC"), raised concerns about the way the Bank managed risk and underwrote loans. In or about November 2008, the Bank sent to the Federal Reserve an application requesting approximately 28 million in funds from the Troubled Asset Relief Program ("TARP"). Based on its regulator's concerns about the health of the Bank, the Federal Reserve later requested that the Bank withdraw its TARP application. Based on this recommendation, the Bank did indeed withdraw its TARP application. On or about March 19, 2010, the Federal Reserve issued a report from its September 2009 examination of the Bank that concluded that the overall financial condition of the Bank had deteriorated to an unsafe and unsound condition. The Federal Reserve noted its particular concern regarding the practices that management had used to mask the past due status of classified loans. On or about July 2, 2010, the Bank entered into a Written Agreement with the Federal Reserve and the VSCC to regulate the Bank's plan to recover from its deteriorating financial condition. Among other things, the Agreement prohibited the Bank from extending, renewing, or restructuring any loans to specific troubled borrowers without the explicit approval of the Bank's Board of Directors. ERIC H. MENDEN and Conspirator A were among the specified troubled borrowers.

78. On or about June 9, 2010, at the request of Conspirator B, ERIC H. MENDEN, through a nominee borrower, purchased Bank-owned property located on Crawford Parkway in Portsmouth, Virginia. From on or about April 30, 2010 to on or about June 9, 2010 Conspirator B and Conspirator E caused the Bank to fund a \$202,500 loan to facilitate this fraudulent transaction.

79. On or about June 28, 2010, at the request of Conspirator B, ERIC H. MENDEN, through a nominee borrower, purchased three parcels of Bank-owned property. From on or about May 17, 2010 to June 28, 2010, Conspirator B and Conspirator E caused the Bank to fund a \$1,325,000 loan to facilitate this fraudulent transaction. The properties cost \$1,077,928, but Conspirator B and Conspirator E advanced an additional \$247,000 supposedly to pay for improvements to the properties. In fact, ERIC H. MENDEN used the proceeds for his own personal purposes.

80. On or about August 31, 2010, at the request of Conspirator B, ERIC H. MENDEN, through a nominee borrower, purchased Bank-owned property located on Hough Avenue in Norfolk, Virginia. From on or about August 12, 2010 to on or about August 31, 2010, Conspirator B and Conspirator E caused the Bank to fund a \$108,000 loan to facilitate this fraudulent transaction.

81. In or about October 2010, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A, through a nominee borrower, attempted to purchase five properties in Alabama, owned in part by Conspirator D, a bank insider. ERIC H. MENDEN had spoken with the nominee borrower about the transaction, but the nominee borrower never agreed to pursue the transaction. Nevertheless, Conspirator B and Conspirator E – without first even speaking with the nominee borrower to confirm his desire to purchase the properties – attempted to cause the Bank to fund a \$1,310,466 loan in the name of the nominee borrower to facilitate this fraudulent transaction.

D. CONCLUSION

82. Conspirator B and Conspirator C caused the Bank to fund most of these loans without obtaining from ERIC H. MENDEN and Conspirator A basic documents such as tax

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returns and current personal financial statements. Almost all of the loans to ERIC H. MENDEN and Conspirator A are priced at prime and are on an interest only basis. Moreover, Conspirator B and Conspirator C regularly permitted ERIC H. MENDEN and Conspirator A to overdraw their demand deposit accounts. In spite of the liberal terms, ERIC H. MENDEN and Conspirator A were almost always late on their interest payments, almost never paid any principal, and required the Bank to force place tax and insurance for the properties serving as collateral for their loans. Additionally, Conspirator B waived over \$17,000,000 in Bank-related fees for ERIC H. MENDEN and Conspirator A over the course of their relationship with the Bank.

83. On or about September 1, 2011, the Bank sent a demand letter regarding all of ERIC H. MENDEN and Conspirator A's loans. ERIC H. MENDEN and Conspirator A have not made a single payment of either principal or interest on any of their jointly-held loans since receiving the demand letter.

84. On or about September 23, 2011, the Bank failed and the Federal Deposit Insurance Corporation placed it into receivership. At the time the Bank failed, ERIC H. MENDEN and Conspirator A jointly owed the Bank approximately \$41,000,000.

85. The total approximate loss related solely to the loans outlined in the statement of facts and information is at least \$13,263,443.

The defendant acknowledges that the foregoing statement of facts does not describe all of his conduct relating to the offenses charged in this matter.

Neil H. MacBride  
United States Attorney

By: Melissa E. O'Boyle  
Melissa E. O'Boyle  
Assistant United States Attorney

Katherine Lee Martin  
Katherine Lee Martin  
Assistant United States Attorney

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, ERIC H. MENDEN, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

ERIC H. MENDEN

I am ERIC H. MENDEN's attorney. I have carefully reviewed the above Statement of Facts with her. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Fernando Groene  
Fernando Groene  
Counsel for Defendant